

Exhibit D

Guide to Changes in the Draft Clean Water State Revolving Fund (CWSRF) Policy Amendment to Address Public Comments State Water Resources Control Board (Water Board) September 16, 2008, Board Meeting

The following significant changes were made to the draft CWSRF Policy Amendment in response to comments submitted during the public comment period (July 22, 2008 to August 21, 2008). Changes are shown in the order in which they appear in the Policy Amendment.

Red text indicates Policy amendments proposed by staff on July 22. Blue text represents amendments proposed by staff in response to public comments.

In addition, staff highlighted all of the changes (in yellow) made to address public comments in the “revised Exhibit B.”

Section III, Definitions:

The definition of “house laterals” was changed to read “... the sewer pipe from the public right-of-way to the residential, **commercial, institutional, or industrial** structure.” **Commentators: Sanitation Districts of Los Angeles County and Tri-TAC**

Section IV.C.1, Priority Classes

Added the term “**City Council**.” This will allow City Councils, along with County Boards of Supervisors and County Health Officers, to certify a health problem that puts a project in Priority Class A **Commentator: Self-Help Enterprises**

Section IV.F, Funding of Projects:

Clarified the priority of projects when the CWSRF has limited funds available.

If insufficient funds are available for all projects seeking funding, then the Division shall first fund projects based on the Priority Classes established above, giving priority within the Class to the disadvantaged community with the lowest median household income. If the above factors are comparable, then the project that most effectively addresses global climate change shall be funded first.

Commentators: Clean Water Action and Environmental Justice Coalition for Water, Sanitation Districts of Los Angeles County, Tri-TAC, Self-Help Enterprises, Toulemne Utilities District

Section V, Match:

This section was clarified. Staff used the term “**match**” to describe funds contributed to a project by the local agency. The remaining funds were described as fund disbursed by the State Water Board or the applicable percent

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(83.33 percent) was used to avoid confusing terminology. **Commentators:**
Sanitation Districts of Los Angeles County and Tri-TAC

Section V.B, Match:

Extended term financing was excluded from match financing. Disadvantaged communities are unlikely to afford the matching requirement and extending a match financing further reduces interest earnings for the CWSRF. The maximum repayment period for a match loan will be 20 years. **Commentators:** ***Sanitation Districts of Los Angeles County and Tri-TAC***

Section VII, Refinancing:

This section was labeled paragraphs “A” and “B” to clarify that it deals with two issues. Text was added at the beginning of paragraph B to further clarify that it applies to all recipients, not just disadvantaged communities. **Commentators:** ***Self-Help Enterprises, Sanitation Districts of Los Angeles County, and Tri-TAC***

Section IX, Facilities Planning:

The initial paragraph was edited to clarify what is required to receive funding.

~~Applicants will be required to complete a facilities planning process. Applicants must submit planning and financial documents to obtain funding for their projects. The documents include A complete facilities plan will~~ a Project Report, ~~a~~ complete Environmental Documents, ~~and a draft Revenue Program~~ **Water Conservation requirement compliance documents, and credit analysis documents”** **Commentators:** ***Sanitation Districts of Los Angeles County and Tri-TAC***

Section IX.A.10.b, Project Report:

A common design criterion was added to the example design criteria.

,. , “...peak flows, daily Biochemical Oxygen Demand (BOD) or **Chemical Oxygen Demand (COD)** loadings, daily suspended solids ...” **Commentators:** ***Sanitation Districts of Los Angeles County and Tri-TAC***

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Section IX.A.10.d, Project Report:

A sentence was added to this section to clarify that income generated by the project should be included in the cost impact analysis. “Also include any income generated by the project, such as income generated by the sale of recycled water;” **Commentator: Tuolumne Utilities District**

Section IX.A.11.d, State Planning Priorities:

Text was added to address situations where agencies are restricted from analyzing state planning priorities. “Agencies that are legislatively prohibited from engaging in these activities are exempt from this requirement. Exempt agencies shall provide a statement in their Project Report citing the legislation and what activities are prohibited.” **Commentators: Sanitation Districts of Los Angeles County and Tri-TAC**

Section IX.B.4, Environmental Impact Analysis:

This section was edited to clarify when the time frame begins and how agencies can meet this USEPA Operating Agreement requirement. “Environmental documents must be have been adopted by the lead agency less than five years old at the time of before the execution of the financing agreement. If the environmental documents are more than five years old, the applicant must re-evaluate the environmental conditions documents and issue a public notice explaining the results of the reevaluation and prepare updated Environmental documents. The reevaluation can be done through updated environmental documents (e.g., Supplemental Environmental Impact Report [EIR], Addendum, Subsequent EIR or other appropriate document for the Project) and provide an opportunity for public comment on the Project, or any other appropriate document, for the Project. The applicant shall provide a copy of the reevaluation and public notice regarding the Project.” **Commentators: Sanitation Districts of Los Angeles County and Tri-TAC**

Section IX.E, Credit/Legal Review:

The section was edited and text was added to explain the credit review process.

The Division will perform a credit/legal review to determine the applicant's creditworthiness and recommend a maximum funding amount based on this review. If Project costs exceed the credit limit, the applicant must secure additional or alternative funding or provide the Division with additional security, subject to a revised credit review.

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The process for completing the credit review is as follows:

- Applicant submits the information noted in the “Credit Review,” Section IX.E, along with user information required in “Facilities Planning,” Section IX.A.
- The Division will forward this information to its contractor, CalMuni, for analysis. CalMuni will determine the applicant’s credit worthiness based on a process modeled on that used by the major rating agencies (Standard & Poor’s, Fitch, and Moody’s) and actual/projected revenues.
- The Division will establish a credit limit for the applicant in consultation with CalMuni. This will be the basis for the Preliminary Funding Commitment (PFC). The PFC will contain a condition requiring that the applicant approve the necessary revenues to repay the CWSRF financing agreement before the agreement can be executed.
- If the applicant’s project cost exceeds the credit limit at any time, the Division staff will work with CalMuni and the applicant to find a way to finance the project if feasible.

All Applicants shall comply with the Credit Review guidelines below. A preliminary funding commitment will not be approved until the Credit Review documents have been submitted, reviewed, and a credit limit determined for the applicant. **Commentators: Sanitation Districts of Los Angeles County and Tri-TAC**

Paragraph IX.E.1, Credit/Legal Review:

This paragraph was revised to read:

“The applicant shall provide an opinion from competent counsel addressing whether an election or Proposition 218 review is required for approval for the revenue necessary to pay the requested financing. If applicable, the applicant submit evidence that the revenue needed has been approved for the project pursuant to applicable election or Proposition 218 procedures or a legal opinion explaining why an election or Proposition 218 procedures are not applicable. The net revenue to debt coverage shall be at least 1.2 to 1.0 for all senior debt and 1.1 to 1.0 for all debt for a minimum of three (3) years the highest year’s debt service after completion of project construction. If the necessary revenue has not been approved, a preliminary funding commitment financing agreement will not be approved.” **Commentators: Sanitation Districts of Los Angeles County and Tri-TAC**

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Section IX.E.5.d, Existing Indebtedness:

The word “**digital**” was added to allow submittal of electronic copies of existing indebtedness documents in addition to paper copies. **Commentators:**
Sanitation Districts of Los Angeles County and Tri-TAC

Section IX (F), Other Submittals

The section was revised to read: “**Legal Authority – The applicant shall cite the statute that authorizes the applicant to enter into the financing agreement requested and provide contact information for the applicant’s legal counsel for follow up questions from State Water Board legal counsel.**” **Commentator:**
Tuolumne Utilities District

Sections IX.G.1.a, Eligible, and IX.G.2.a, Ineligible

Text was modified to clarify that “**purchase of lands, rights-of-ways, and easements for land that will be an integral part of the treatment process or will be used for sludge disposal**” are eligible for funding consistent with USEPA guidance. **Commentator: *Self-Help Enterprises***

Section IX.G.1.g, Eligibility

Text was added for clarification:

“**Recycled water distribution and storage system capacity purchases directly related to the operation of eligible facilities consistent with the Water Recycling Funding Program (WRFP) Guidelines in Appendix D;**” **Commentator: *Mr. Paul Johnston***

Section XIV.A, Interest Rate and Service Charge

The following paragraph was added to explain the service charge:

The Service Charge provides funding for administration of the CWSRF Program. These costs were previously funded by the federal grants the Program receives. Since these grants have been declining, though, the Legislature approved redirecting some of the interest earnings on financing agreements to administration of the Program to replace any funds not provided by the grants. The interest is reduced on financing agreements that include the Service Charge so that the overall payment is the same whether a Service Charge is applied or

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not. Commentators: Sanitation Districts of Los Angeles County and Tri-TAC

Section XIV (C), Future Local Debt:

This section was revised to read:

1. The applicant's future debt may not be senior to CWSRF debt. ~~The CWSRF financing agreement will contain a provision requiring the recipient's future local debt to be subordinate to the CWSRF debt. The Division may waive this provision if all of the following criteria are met.~~ The applicant's future local debt may be on parity with the CWSRF debt if ~~all of the following criteria~~ conditions are met.

- a.
 - i. The recipient's non-subordinate debt is rated "A", or higher, by at least two nationally recognized rating agencies; or
 - ii. ~~The applicant is a disadvantaged community and Division determines that it would be economically burdensome for the agency to obtain nationally recognized ratings for its non-subordinate debt; or~~
 - iii. ~~The applicant is a disadvantaged community and the Division determines that requiring future debt to be subordinate to the CWSRF debt will unduly restrict the agency from obtaining future system debt necessary for water quality improvements.~~

~~and~~

- b. The applicant's ~~pledges that~~ net revenues ~~pledged available to pay the SRF loan~~ all senior debts relying on the pledged revenue source are at least 1.24 times the ~~next three (3)~~ highest year's debt service and net revenues pledged to pay all debts are at least 1.10 times ~~all recipient debts for the next three (3) the highest year's debt service on SRF loans;~~
***Commentators: Bartle Wells Associates (BWA),
Sanitation Districts of Los Angeles County, Tri-TAC***

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Section XIV.D, Effective Date:

This paragraph was clarified. The word “**generally**” was removed. The last sentence now reads: “**This date will **generally** be the date of FP&S approval.**”
Commentators: Sanitation Districts of Los Angeles County and Tri-TAC